BLANK

PAGE

Office-Supreme Court, U.S.
FILED
DEC 23 1966
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 792

CITY OF MESA, a municipal corporation,

Petitioner,

v.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Agricultural Improvement District,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

JENNINGS, STROUSS, SALMON & TRASK
Irving A. Jennings
Rex E. Lee
111 W. Monroe
Phoenix, Arizona
Attorneys for Respondent

BLANK

PAGE

INDEX

	Page
Brief in Opposition to Petition for Certiorari	
Background Statement	2
Reason for Denying the Writ	5
1. There is an Independent State Ground	6
2. Title is in the United States	7
3. Federal Interest in This Federal Reclamation Project	11
The Decision Does not Conflict With any Decision of This Court	16
Conclusion	18

TABLE OF CASES CITED

Page

1. Black v. Cuttet Laboratories, 351 U.S. 292 (1956) 7
2. Central Louisiana Electric Company v. Rural Electrification Administration, 236 F.Supp. 271 (W.D. La. 1964) 15, 16
3. City of Fairbanks v. Electric Distribution System, 413 P.2d 165 (Alaska 1966) 14, 15, 16
4. Dugan v. Rank, 372 U.S. 609 (1963) 16
5. Federal Housing Administration v. Burr, 309 U.S. 243 (1940) 16
6. Federal Land Bank v. Priddy, 295 U.S. 229 (1935) 16
7. Fox Film Corp. v. Muller, 296 U.S. 220 (1935) 7
8. Herb v. Pitcairn, 325 U.S. 17 (1945) 7
9. Ivanhoe Irrigation District v. McCracken, 357 U.S. 275 (1958) 8
10. James Stewart & Co. Inc. v. Sadrakula, 309 U.S. 94, (1940) 13
11. Keifer & Keifer v .Reconstruction Finance Corp., 306 U.S. 381 (1939) 17
12. Land v. Dollar, 330 U.S. 731 (1947) 13, 18
13. Larson v. Domestic & Commerce Corp., 337 U.S. 682 (1949) 16

CASES (Continued Page

14. Nyberg v. Salt River Project Agricultural Improvement and Power District, 91 Ariz. 397, 372 P.2d 727 (1962) 17

15. Peterson v. Salt River Project Agricultural Improvement and Power District, 96 Ariz. 1, 391 P.2d 567 (1964) 17

16. Public Utility District No. 1 v. Inland Power & Light Co., 64 Wash. 2d 122, 390 P.2d 690 (1964) 14, 15, 16

17. Reconstruction Finance Corporation v. Menihan Corp., 312 U.S. 81 (1941) 16

18. Reichenberger v. Salt River Project Agricultural Improvement and Power District, 50 Ariz. 144, 70 P.2d 452 (1937) 10

19. Sloan Shipyards Corp. v. United States Shipping Board, 258 U.S. 549 (1922) 17

20. Swigart v. Baker, 229 U.S. 187 (1913) 8

21. Uhlmann v. Wren, 97 Ariz. 366, 401 P.2d 113 (1965) 8, 10, 13

22. United States v. Brosnan, 363 U.S. 237 (1960) 11

23. United States v. Carmack, 329 U.S. 230 (1946) 13

24. United States v. Georgia Public Service Commission, 371 U.S. 285 (1963) 13

TABLE OF OTHER MATERIALS

		Page
1.	Reclamation Act of June 17, 1902, 32 Stat. 388, 43 U.S.C. § 371 et seq	2, 17
2.	S. Rep. No. 1468, 57th Cong., 1st Sess. (1902)	12
3.	H. R. Rep. No. 1,000, 67th Cong., 2d Sess. (1922)	9
4.	S. Rep. No. 826, 67th Cong., 2d Sess. (1922)	9
5.	Rural Electrification Act of 1936, 49 Stat. 1363, 7 U.S.C. §§ 901-14	14
6.	Public Law 89-719, 80 Stat. 1147-1148 (1966)	15
7.	Arizona Revised Statutes § 12-1117	6

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 792

CITY OF MESA, a municipal corporation,

Petitioner,

v.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Agricultural Improvement District,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

This is an action in which the City of Mesa, a municipal corporation of the State of Arizona, attempted by eminent domain to acquire part of the electrical plant and system of the Salt River Project Agricultural Improvement and Power District. In the trial court, the United States of America filed a representation of interest, arguing that the action must be dismissed for failure to join the United States as an indispensable party. The

respondent had earlier filed a motion to dismiss for lack of jurisdiction on the ground, among others, that the United States was an indispensable party. This motion was denied but reargued after the United States had filed its representation of interest. The trial court dismissed for failure to join the United States as an indispensable party. On appeal the Arizona Supreme Court affirmed the dismissal on the ground that the property sought to be condemned was property in which the United States had an interest and that the United States was, therefore, an indispensable party.

The Court also held that to permit the City to condemn portions of the integrated system of the Salt River Project would be to derogate from the congressional purpose in establishing the Salt River Project as a federal reclamation project.

BACKGROUND STATEMENT

The correctness of the holdings of the lower courts can be best appreciated against the background of a brief history of the Salt River Project. The Salt River Valley Water Users' Association (hereinafter, the Association) is a corporation which was created under the laws of the Territory of Arizona on February 9, 1903, for the purpose of entering into an agreement with the United States of America under the provisions of the Reclamation Act of June 17, 1902, 32 Stat. 388, 43 U.S.C. § 371 et seq, thereby availing the shareholders of the corporation of the benefits of the Reclamation Act. Such an agreement was entered into on June 25, 1904, and the Salt River Project became the first project organized under the authority of the Reclamation Act. Pursuant to this agreement the United States constructed what is now known as the Theodore Roosevelt Dam, and various water distribution and power facilities were constructed or otherwise acquired. From the time of the formation of the Project until 1917, its ownership, operation, and control were retained by the

United States, acting through the United States Reclamation Service.

On September 6, 1917, the United States and the Association entered into a contract (Pet. App. C) by which the United States agreed that it would:

> turn over to and vest in the said Association, the care, operation and maintenance of the irrigation works known as the Salt River Project, situate in the Counties of Gila, Pinal and Maricopa, consisting generally of the Roosevelt Dam, the Granite Reef Dam, irrigation canals, laterals and ditches, and other conduits, gates, pipes, power plants, power houses, buildings and other structures of every kind, transmission, telegraph and telephone lines . . . with such right of possession of all thereof, as shall be necessary or convenient for the care, operation and maintenance of said project by said Association, as hereinafter provided. (Article Second, 1917 Agreement, Pet. App. C2)

It was also provided that the Association should have the right to all of the rents, issues, profits, revenue and income from the Project from the date of its taking over the care, operation and maintenance. *Ibid.*

The purpose and function of the Salt River Project after its care, maintenance and operation were turned over to the Association were precisely the same as they had been before: the effectuation of the basic objectives of the Reclamation Act. Thus, the Association agreed that it would care for, operate, and maintain the Project's system in full compliance with the Reclamation law. The Secretary of the Interior reserved the right to terminate the Agreement by written notice "in case the Association fails to carry out the provisions of law relating thereto, or of this agreement, in their true intent and meaning. . . ." (Article Ninth, 1917 Agreement, Pet. App. C7) All contracts for the sale or lease of power or power privileges covering a period of more than one year were made subject to the approval of the Secretary of the Interior,

and the United States was given the right to inspect the books and records of the Association with regard to the care, operation, and maintenance of the Project. (Article Eleventh, Pet. App. C8) A narrow but specific obligation which the Association undertook was to provide "for water rights for 631 Salt River Indian allotments of 10 acres each. . . ." (Article Fifteenth, Pet. App. C9)

The Association also obligated itself to repay to the United States the cost of the construction of the Project, without interest. (Article Fourth, Pet. App. C3-C5) As the Arizona Supreme Court pointed out, however, this obligation to repay the construction cost was only one of many obligations undertaken by the Association, and the United States retained many interests of a continuing nature in the contract other than its interest in the repayment of the construction cost. The purpose of the Salt River Project after the 1917 Agreement remained the same: "to carry out the provisions of [the reclamation] law. . . ." (Article Ninth, Pet. App. C7) Only the agent charged with the effectuation of that purpose had changed. And it was expressly provided that if the Association failed to carry out the provisions of the Reclamation Law, management of the Project would revert to the United States. *Ibid.*

On March 22, 1937, the Association entered into an agreement with the respondent, Salt River Project Agricultural Improvement and Power District (hereinafter, the District), transferring to the District all of the Association's properties, including all water and power rights, franchises and privileges, and revenues therefrom. The agreement recited the earlier Association-United States contracts and referred to the works and properties comprising the Salt River Project as "vested in the United States" under the Reclamation Act.

The United States approved the 1937 agreement between the Association and the District "upon the express condition that the

District agrees to accept title to the property conveyed subject to any and all provisions of all contracts between the United States and the Association and that the District will faithfully and promptly comply with any order directed to the Association by the United States pursuant to said contracts. . . ." This condition was formally accepted by both the Association and the District on May 19, 1937. In September of 1949, the agreement between the Association and the District was amended to provide that the District would assume the maintenance and operation of the electric power system from the Association.[1]

Therefore, the relationship between the District and the United States, and the continuing interest of the United States in the District and its properties, including those at issue here, are determined by the 1917 agreement between the United States and the Association.

REASONS FOR DENYING THE WRIT

The nub of the petitioner's contention before this Court, as in the courts below, is that the only interest of the United States in the Salt River Project is its financial interest in seeing that the original cost of construction is repaid.

The petition for certiorari should be denied for three separate and independently sufficient reasons:

1. The Arizona Supreme Court has determined that the United States is an indispensable party. The question of who is an indispensable party to an eminent domain action in an Arizona state court is solely a question of Arizona law. Therefore, the holding of the lower court rests upon an independent state ground.

---

[1]All of the agreements referred to here were before the lower court and are part of the record. (See pocket part, Abstract of Record)

2. The property sought to be condemned either belongs to the United States or is property in which the United States has an interest. Whether the United States holds legal title to all of the property in question or whether title to some of such property is held by the District in trust for the United States can only be determined by a construction of the contracts which were before the Court and by the interpretation of the Reclamation Act. In either case, the title or interest of the United States may not be determined in its absence.

3. More important even than the property interest of the United States, is its interest in maintaining the integrity of the Salt River Project as a federal reclamation project; the Supremacy Clause of the United States Constitution therefore proscribes any attempt by the petitioner or any other state entity to carve off whatever portions of this integrated Reclamation Project the petitioner would like to have for itself.

These three reasons will be discussed in order.

1. *There is an Independent State Ground.* The nature of the federal interest in the properties here sought to be condemned will be discussed in the two succeeding sections. As will be shown, that interest is such that the doctrine of sovereign immunity and the Supremacy Clause of the United States Constitution preclude the properties from being taken by a political subdivision of the State. Regardless of the extent of the interest of the United States as a matter of federal law, however, the Arizona Supreme Court has held in this case that the interest of the United States is sufficient to constitute the United States an indispensable party to a state eminent domain action involving the District's facilities.

The determination of indispensable parties in an eminent domain proceeding brought in an Arizona state court is solely a matter of Arizona law. See Arizona Revised Statutes §12-1117. The holding of the lower court therefore rests upon an independ-

ent state ground, and under well settled authority, review by this Court will be denied. *Black v. Cutter Laboratories,* 351 U.S. 292 (1965); *Herb v. Pitcairn,* 325 U.S. 17 (1945); *Fox Film Corp. v. Muller,* 296 U.S. 220 (1935).

2. *Title is in the United States.* The petitioner contends that "it is not reasonable to conclude that the Congress intended that the landowners were to repay the cost of the project to the Government and yet were not to become the owners thereof—at least as to the major part thereof." (Pet. p. 12) The respondent takes a different view concerning what is a reasonable conclusion as to Congress' intent.

The Reclamation Act plainly draws a distinction between title to reclamation project properties, and their care, maintenance and operation.[2] By the 1917 Agreement, the United States relinquished only "the care, operation and maintenance of the irrigation works known as the Salt River Project . . ."; (Pet. App. C2)

---

[2]Section 6 of the Reclamation Act of June 17, 1902, provides as follows:

That the Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this act: *Provided,* That when the payments required by this act are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided,* That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress. 32 Stat. 389, 43 U.S.C. §§ 491, 498.

it did not release, and has never released the title.[3] In the 1917 Agreement, the Secretary of Interior also retained the right to terminate the Agreement and resume the management, operation and control of the Project "in case the Association fails to carry out the provisions of law relating thereto, or of this Agreement . . . ." (Pet. App. C7) In light of the integrated nature of the Salt River Project's water conservation and electric generation and distribution facilities, *Uhlmann v. Wren*, 97 Ariz. 366, 401 P.2d 113 (1965), it is inconceivable that the 1917 Agreement contemplated the resumption of management and control only of the facilities as they existed at the time of the 1917 Agreement.

Therefore, whether it be characterized as title, or as the interest of one for whom properties are held in trust, the United States has—and will continue to have, until relinquished by the United States—a property interest in all of the facilities of the Salt River Project.

This conclusion—that the property interest of the United States extends to post-1917 Agreement properties—is clearly that which has been adopted and followed by Congress. In 1922, then United States Representative Carl Hayden quoted in a report of the House Committee on Irrigation of Arid Lands a letter from the Association stating that:

---

[3]It is true, as the petitioner asserts, that this Court pointed out in *Swigart v. Baker*, 229 U.S. 187 (1913), that the Reclamation Act established a revolving fund which utilizes moneys from the sale of public lands to construct reclamation projects. Moneys used to finance such projects would be repaid into the fund and used for other projects. This Court did not say, however, that upon repayment, title passed from the United States; the Act expressly provides otherwise. The scheme contemplated by the Act was not one which merely provided interim financing until the landowners could purchase all interest in the project; rather the United States retained a continuing property interest, the cost of which, as this Court stated in *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275, 295 (1958), "will never be recovered in full."

Under our contract with the Government any new development or extension of our present power system automatically becomes the property of the United States Government; to be operated for the benefit of the project it is true, but nevertheless the title will always remain in the United States Government. H.R. Rep. No. 1,000, 67th Cong., 2d Sess. p. 2 (1922).

Congressman Hayden's report for the Committee concludes as follows:

> Your committee is of the opinion that the enactment of this bill, as amended, will, under proper safeguards, permit the development of additional hydroelectric power in connection with the Salt River project. The title to all such improvements remains in the United States and, without appropriations by Congress, this development will materially increase the security for the sums due to the United States for the construction of the project. *Id.* at p. 6.

The Report of the Senate Committee on Irrigation and Reclamation by Senator Cameron also refers to Mr. Hayden's Report, and concludes that "the title to all such improvements remains in the United States. . . ." S. Rep. No. 826, 67th Cong., 2d Sess. p. 2 (1922).

The 1937 Agreement between the Association and the District, which was approved by the United States, contains the following recital:

> WHEREAS, the Association, in furtherance of the objects for which it was incorporated, has expended or undertaken the payment of the following amounts for the construction by the United States or by the Association with the approval of the United States, upon the lands of the United States, without or within the boundaries of the Association, and for the equipment of storage dams, diversion dams, power plants, distribution and communication lines, roads, bridges, power and irrigation canals, laterals, ditches, pumping plants, pipe lines, and

other properties and facilities, *all of which are owned by the United States,* to-wit: (Emphasis added)

The 1937 Agreement also contains the following covenant by the District:

> 7. The District agrees that it will hold title to all properties conveyed or assigned to it under the provisions of Paragraph 2 of this Agreement, for the use and benefit of the United States, insofar as the United States may have an interest therein under the Reclamation Act and its amendments, and subject to disposition of such interest by order of the Secretary of the Interior of the United States, or other officer designated thereto by the Act of Congress known as the Reclamation Act, or acts amendatory thereof.

Therefore, twenty years after the Agreement between the Association and the United States—during which twenty year period many additional facilities were constructed—and almost thirty years prior to the institution of this condemnation action, and therefore not interpretable as a self-serving statement, all of the parties involved, including the United States, the District and the Association, regarded the United States as having a property interest in all of the Salt River Project properties. No distinction was drawn between pre-1917 and post-1917 properties.

The Arizona Courts have long recognized the continuing property interest of the United States in the properties of the District. In *Uhlmann v. Wren,* 97 Ariz. 366, 401 P.2d 113 (1965), for example, the District's statutory authority to condemn certain lands was challenged "because the District will hold the property in trust for the United States Government." 97 Ariz. at 383. The Arizona Court disagreed with the conclusion, but did not reject the premise—that the United States would have an interest in the property to be condemned. See also *Reichenberger v. Salt River Project Agricultural Improvement and Power District,* 50 Ariz. 144, 70 P.2d 452 (1937).

In short, the petitioner's assumption that the property interest of the United States in the Salt River Project terminated when the original construction cost was repaid is at odds with the purpose and the express language of the Reclamation Act; with relevant legislative history statements; with the 1937 Agreement involving the United States, the District, and the Association; and with the view that has consistently been taken by the Arizona Supreme Court. The United States now has—and will continue to have until relinquished by Congress—a property interest in the facilities at issue here. "Under the decisions of this Court, a judicial proceeding against property in which the Government has an interest is a suit against the United States which cannot be maintained without its consent." *United States v. Brosnan*, 363 U.S. 237, 250 (1960).

3. *Federal Interest in This Federal Reclamation Project.* Even more important than its property interest is the interest of the United States in maintaining the integrity of the Salt River Project Agricultural Improvement and Power District as the agent charged with the implementation of the Salt River Project as a federal reclamation project. The ultimate purpose, as prescribed by Congressional directive, of this and other federal reclamation projects, is to develop the public domain through the conservation and

distribution of water and the reclamation of arid lands.[4] The achievement of this end, by nature, involves a continuing process which is carried out by the District as agent for the United States.

The program remains, however, a federal program, and the objectives are those which were established by Congress. All contracts for the sale or lease of power or power privileges covering a period of more than one year are subject to the approval of the Secretary of Interior. (Pet. App. C8) The Association is obligated to keep records of water deliveries and of crops raised under the Project "as well as such other records as are appropriate to the interests of the Project as a whole." (Pet. App. C7) Similarly, the books and records of the respondent "relating to the project and its care, operation and maintenance" must remain available for inspection by representatives of the United States. (Pet. App. C8)

The facilities sought to be condemned here are part of the District's electric distribution system. The sale of electricity by the

---

[4] S. Rep. No. 1468, 57th Cong., 1st Sess. (1902) pp. 16-17, contains the following statement by President Theodore Roosevelt as to the purpose of the proposed reclamation law:

> The majority of the committee are of the opinion that an imperative duty devolves upon the American Congress to lend assistance to the development of the great arid and semiarid portion of our country now but sparsely settled, but capable when fully developed of maintaining a large and prosperous population. In this territory must be found homes for the sons of the farmers of the Eastern and Middle states who may desire to take Horace Greeley's advice to 'Go West and grow up with the country.' In this region lies the best and most hopeful field for an increased market for American manufacturers, not only among those who shall occupy the irrigated farms, but also among the great mining and urban populations which will be established there.
>
> To aid in the reclamation of the desert and in establishing there a home-owning population will not only vastly increase the strength and prosperity of the entire nation, but is a duty which the government cannot escape, which is paramount in importance to every other duty now laid upon the American People.

District exists solely for the purpose of providing sufficient revenues to make the Project's irrigation and conservation activities economically feasible. As the Arizona Supreme Court pointed out in *Uhlmann v. Wren,* 97 Ariz. 366, 383, 401 P.2d 113 (1965), the development and sale of electric power by the District is "an incidental phase of reclamation, not a primary or independent end in itself." The electric generation and distribution system and the water storage and delivery system of the Project are, therefore, integrated, inter-dependent parts of a single whole, the one providing the funds to make the other economically feasible. *Uhlmann v. Wren, supra.*

This Court has held that "the authority of state laws or their administration may not interfere with the carrying out of a national purpose. Where enforcement of the state law would handicap efforts to carry out the plans of the United States, the state enactment must, of course, give way." *James Stewart & Co. Inc. v. Sadrakula,* 309 U.S. 94, 103-104 (1940).[5]

Also, in *Land v. Dollar,* 330 U.S. 731, 738 (1947), relied upon by the petitioner, this Court stated as follows:

> But the rule is based on practical considerations reflected in the policy which forbids suits against the sovereign without its consent. The 'essential nature and effect of the proceeding' may be such as to make plain that the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration. Ex parte State of New York, 256 U.S. 490, 500, 502, 41 S.Ct. 588, 590, 591, 65 L.Ed. 1057. If so, the suit is one against the sovereign. *Mine Safety Co. v. Forrestal, supra,* 326 U.S. at page 374, 66 S.Ct. at page 221.

The Arizona courts have correctly recognized the threat to important federal interests which would be posed by allowing a

---

[5]See also, *United States v. Carmack,* 329 U.S. 230 (1946); *United States v. Georgia Public Service Commission,* 371 U.S. 285 (1963).

city to carve off at will whatever portions of a federal reclamation project it chose to take. If the lower courts had upheld such a power in the City of Mesa, this would have meant that any local state entity with powers of eminent domain could await the development of efficient integrated systems by federal reclamation projects, and then take whatever portion of the facilities constituting part of the integrated whole the condemning state entity wanted. Presumably, the facilities taken would, as in this case, be those located in high density population centers possessing the greatest revenue producing potential.

In a closely related context, two state courts have held that state political subdivisions having eminent domain powers cannot condemn parts of electric distribution systems of electric cooperatives financed under the Rural Electrification Act of 1936, 49 Stat. 1363, 7 U.S.C. § 901-14. *Public Utility District No. 1 v. Inland Power & Light Co.*, 64 Wash. 2d 122, 390 P.2d 690 (1964); *City of Fairbanks v. Electric Distribution System*, 413 P.2d 165 (Alaska 1966). In the *City of Fairbanks case*, the Alaska Supreme Court observed as follows:

> If Golden Valley is deprived of its facilities in the profitable areas, then the federal policy of providing electrical services for rural areas might well be frustrated, because the service area left to Golden Valley after removing the cream of the consumers of electrical services would be uneconomic and not self sustaining.
>
> In these circumstances we believe that the United States has an interest in this litigation that would be adversely affected by the judgment condemning the electric distribution facilities in the Island Homes Subdivision. It is an interest that would not be satisfied merely by repayment from the condemnation proceeds of the pro tanto portion of the money the United

States has loaned to Golden Valley.[6] The interest of the United States is not merely that of a money lender who expects repayment of its loan with interest. The interest of the United States is in seeing to it that Golden Valley is able to continue to provide electrical services at reasonable rates to the rural areas it has undertaken to serve. This it may not be able to do if the cream of its consumers of electrical energy in the densely populated areas is skimmed off by another utility, such as the City of Fairbanks. 413 P.2d at 167-168.

In *Public Utility District No. 1 v. Inland Power & Light Co., supra,* the Washington Supreme Court observed that "Inland's purpose is to implement the rural electrification program, i.e., to bring the benefits of electrification and telephone service to sparsely populated and remote areas that were not served by existing public utility companies." 390 P.2d at 691. The Court therefore concluded that: "A survey of the loan contracts, mortgages and the Rural Electrification Act leads to only one conclusion: The United States has a substantial interest in the properties in Pend Oreille County which the District seeks to condemn." *Ibid.*

There is no conflict between the *Inland Power* and *City of Fairbanks* cases, on the one hand, and *Central Louisiana Elec. Company v. Rural Electrification Administration,* 236 F. Supp. 271 (W.D. La. 1964), on the other. *Inland Power & Light Co.* and *City of Fairbanks* involved attempts to condemn facilities belonging to REA financed cooperatives. The *Central Louisiana Electric Company* was not a condemnation action; it was a suit to enjoin the consummation of a loan by REA on the ground that the proposed loan was outside the statutory authority of the

---

[6]Significantly, in those instances in which the only interest of the United States is a financial interest, Congress has given its consent to be joined in a condemnation action involving property on which the United States has or claims a mortgage or other lien. See Public Law 89-719, 80 Stat. 1147-1148 (1966).

defendant officers and that the actions of the officers making the loan would be unconstitutional. The propriety of injunctions against individual governmental officers under such circumstances is of course well settled. *Larson v. Domestic & Commerce Corp.*, 337 U.S. 682 (1949).

Therefore, while it is technically true, as the petitioner states, that *Central Louisiana Electric Co.* "in a somewhat different legal and fact situation has rejected the plea of sovereign immunity as barring 'the suit,' " (Petition, p. 18) *"the suit"* in *Central Louisiana Electric Co.* was not a condemnation action, and the holding was in no way inconsistent with those of the Washington and Alaska Courts in the *Inland Power & Light Company* and *City of Fairbanks* cases.

THE DECISION DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT

The Petititon cites and discusses at pages 16-18 decisions by this Court which the petitioner regards as relevant to one aspect of the lower Court's holding, the sovereign immunity of the United States. Even if these decisions could be interpreted as removing the sovereign immunity bar from this case, only one of the three reasons discussed above why certiorari must be denied—that which rests upon the property interest of the United States—would be affected.

Moreover, the cited cases do not have the relevance attached to them by the petitioner. Their only real relevance is that they show that Congress may waive its immunity where it chooses to do so. *In Federal Land Bank v. Priddy*, 295 U.S. 229 (1935); *Federal Housing Administration v. Burr*, 309 U.S. 243 (1940); *Reconstruction Finance Corporation v. Menihan Corp.*, 312 U.S. 81 (1941); and *Dugan v. Rank*, 372 U.S. 609 (1963), Congress expressly gave its consent to "sue and be sued" in the particular

contexts there involved. In other instances, while the consent was not express, it was found to be implicit. *Sloan Shipyards Corp. v. United States Shipping Board,* 258 U.S. 549 (1922); *Keifer & Keifer v. Reconstruction Finance Corp.,* 306 U.S. 381 (1939).

Here, on the other hand, Congress not only has not waived its immunity from condemnation of reclamation project properties; it has expressly provided that title to these properties shall remain in the United States until relinquished by Congress.

Even without the Congressional waiver which the Court found, the cases cited by the petitioner do not present the same substantive problem as the instant case. Most of the cases cited by the petitioner involved corporations created by the United States Government for the purpose of carrying out certain governmental programs. The question involved in those cases was whether such corporations inherit from the United States blanket immunity from suit. Such is not the issue here. The respondent has never contended, and the Arizona Supreme Court has never held, that the District enjoys a general immunity from suit.[7] The relevant immunity in this case is not one which the District claims to have inherited from the United States; it is, rather, the immunity of the United States itself. Unlike any case cited by the petitioner, this action involves an attempt to condemn property the title to which is in the United States. The decision of the lower court does not rest upon any blanket immunity from suit enjoyed by the District, but upon the simple principle that lands in which the United States has a property interest may not be taken without joining the United States as a party.

---

[7]Indeed, the consistent assumption of both the respondent and the Arizona Courts has been that the District is liable both in contract (*Nyberg v. Salt River Project Agricultural Improvement and Power District,* 91 Ariz. 397, 372 P.2d 727 (1962), and in tort. *Peterson v. Salt River Project Agricultural Improvement and Power District,* 96 Ariz. 1, 391 P.2d 567 (1964).

In *Land v. Dollar*, 330 U.S. 731 (1947), cited by the petitioner, the plaintiffs alleged that certain shares of stock were unlawfully in the possession of the United States Maritime Commission. The Court held that where the right to possession and enjoyment of property is itself in dispute, the issue of who is entitled to the property may be resolved without violating the sovereign immunity rule. The holding of the lower court here is perfectly consistent with *Land v. Dollar*. In this case, the Arizona Court simply held that the documents which were properly before it, including the Reclamation Act, the agreements between the United States and the respondent or its predecessors, and the statements in the reports by Representative Hayden and Senator Cameron, disclosed that, as a matter of law, the United States has a substantial interest in these properties, an interest of which it cannot be deprived in its absence.

CONCLUSION

The Congress of the United States has made careful provision for preservation of the important federal interest in the Salt River Valley Reclamation Project. This interest has been correctly recognized and upheld by both the trial court and the Arizona Supreme Court. The federal interest having been protected, there is no need for further review by this Court. We respectfully submit that the Petition for Ceritorari should be denied.

Respectfully submitted,

JENNINGS, STROUSS, SALMON
& TRASK
Irving A. Jennings
Rex E. Lee
111 W. Monroe
Phoenix, Arizona
Attorneys for Respondent

BLANK

PAGE